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Filing date: **05/13/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91184978
Party	Plaintiff McNeil-PPC, Inc.
Correspondence Address	LAURA POPP-ROSENBERG FROSS ZELNICK LEHRMAN & ZISSU, P.C. 866 UNITED NATIONS PLAZA NEW YORK, NY 10017 UNITED STATES lrosenberg@fzlz.com
Submission	Other Motions/Papers
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Filer's e-mail	lpopp-rosenberg@fzlz.com,ykarzoan@fzlz.com,mortiz@fzlz.com
Signature	/Laura Popp-Rosenberg/
Date	05/13/2011
Attachments	REDACTED-Public Opposer's Rebuttal Notice of Reliance on Dep Test.PDF (19 pages)(760029 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

Opp. No. 91184978

**OPPOSER'S REBUTTAL NOTICE OF RELIANCE
ON DEPOSITION TESTIMONY**

Pursuant to Rule 2.120(j) of the Trademark Rules of Practice, Opposer McNEIL-PPC, Inc. ("Opposer") hereby makes of record and notifies Applicant Walgreen Co. ("Applicant") of its reliance on excerpts from the discovery depositions of Applicant's witnesses as follows.

A. Excerpts from the discovery deposition of Robert L. Tompkins, taken April 16, 2009, as specified below and attached hereto as **Opposer's Exhibit 122**:

- Page 79, line 22 through page 80, line 1. This testimony is in rebuttal to Applicant's Exhibits 124 through 134 attached to Applicant's Notice of Reliance on Official Records.
- Page 162, lines 6-10. This testimony is offered pursuant to Trademark Rule of Practice 2.120(j)(4) in response to Applicant's reliance on page 161 line 6 through page 162 line 5 of the same deposition. Page 162 lines 6-10 is a continuation of the testimony relied upon by Applicant and therefore should in fairness be considered so as not to make misleading Applicant's designated deposition excerpts. Specifically, in Applicant's designated portions, the witness states that Applicant's "overall strategy is that the private brand generally does well when the national

brand also does well.” This additionally designated portion, page 162 at lines 6 through 10, explains why the private brand does well when the national brand does well.

B. Excerpts from the discovery deposition of Rohinish Hooda, taken March 27, 2009, as specified below and attached hereto as **Opposer’s Exhibit 123**:

- Page 69, lines 6-8 [Opposer has designated this excerpt “Trade Secret/Commercially Sensitive”]
- Page 70, lines 5-24 [Opposer has designated this excerpt “Trade Secret/Commercially Sensitive”]
- Page 75, lines 4-6 [Opposer has designated this excerpt “Trade Secret/Commercially Sensitive”]

The above testimony is offered pursuant to Trademark Rule of Practice 2.120(j)(4) in response to Applicant’s reliance on page 62, lines 9 through 21 of the same deposition. In Applicant’s designated lines, the witness identifies certain competitors of ZYRTEC allergy medication. In these additionally designated portions, the witness identifies additional competitors of ZYRTEC allergy medication. Because the witness expanded upon the testimony designated by Applicant, these additional portions should in fairness be considered so as not to make misleading the excerpt relied upon by Applicant.


- Page 162, lines 12-17. [Opposer has designated this excerpt “Trade Secret/Commercially Sensitive”] This testimony is offered pursuant to Trademark Rule of Practice 2.120(j)(4) in response to Applicant’s reliance on page 160, line 6 through page 162, line 11. In Applicant’s designated excerpt, the witness explains the background to a certain survey. This additionally designated portion further explains the background to the survey and thus, in fairness,

ought to be considered so as not to make misleading the deposition portions relied upon by Applicant.

Dated: New York, New York
May 13, 2011

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By:


Laura Popp-Rosenberg

Giselle C. Woo

866 United Nations Plaza
New York, New York 10017
(212) 813-5900

Attorneys for Opposer McNEIL-PPC, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Opposer's Rebuttal Notice of Reliance on Deposition Testimony** to be served via First Class U.S. Mail, postage prepaid, in an envelope addressed to counsel for Applicant, Caroline L. Stevens, Esq., Leydig, Voit & Mayer, 1420 Fifth Avenue, Suite 3670, Seattle, WA 98101, this 13th day of May, 2011.



Laura Popp-Rosenberg

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

Opp. No. 91184978

**EXHIBIT 122
TO
OPPOSER'S REBUTTAL NOTICE OF RELIANCE
ON DEPOSITION TESTIMONY**

The deposition of ROBERT TOMPKINS, called by the Opposer for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States Patent and Trademark Office pertaining to the taking of depositions, taken before BARBARA A. DeMICCO, C.S.R. No. 84-2946, a Notary Public within and for the County of Lake, State of Illinois, and a Certified Shorthand Reporter of said state, at Building 104, Second Floor, Walgreens, 104 Wilmot Road, Deerfield, Illinois, on the 16th day of April, A.D. 2009, commencing at 9:21 a.m.

PRESENT:

FROSS ZELNICK LEHRMAN & ZISSU PC,

(866 United Nations Plaza,

New York, New York 10017,

212-813-5900), by:

MS. LAURA POPP-ROSENBERG,

appeared on behalf of the Opposer;

LEYDIG, VOIT & MAYER, LTD.,

(Two Prudential Plaza, Suite 4900,

Chicago, Illinois 60601-6731,

312-616-5600), by:

MS. CAROLINE L. STEVENS,

-and-

WALGREEN CO.,

(104 Wilmot Road, MS No. 1425,

Deerfield, Illinois 60015,

847-315-4640), by:

MR. FRANCIS C. KOWALIK,

appeared on behalf of the Applicant.

REPORTED BY: BARBARA A. DeMICCO,

C.S.R. No. 84-2946.

1 12:02:53
2 12:02:53
3 12:02:54
4 12:02:57
5 12:03:04
6 12:03:09
7 12:03:12
8 12:03:14
9 12:03:17
10 12:03:19
11 12:03:22
12 12:03:22
13 12:03:22
14 12:03:26
15 12:03:29
16 12:03:35
17 12:03:35
18 12:03:47
19 12:04:08
20 12:04:11
21 12:04:15
22 12:04:24
23 12:04:39
24 12:04:44



Non-Designated Portions Redacted

Q. Do you know of any other allergy
medicines that contain ZYR other than Zyrtec and
WAL-ZYR?

1 12:04:45 A. I'm not aware of any.

2 12:04:59

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6 12:05:19

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8 12:05:32

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10 12:05:35

11 12:05:35

12 12:06:10

13 12:06:24

14 12:06:25

15 12:06:31

16 12:06:31

17 12:06:38

18 12:06:40

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20 12:06:44

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22 12:06:53

23 12:06:54

24 12:07:00

Non-Designated Portions Redacted

1 15:47:46

2 15:47:50

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4 15:47:59

5 15:48:02

6 15:48:02

7 15:48:08

8 15:48:09

9 15:48:13

10 15:48:24

11 15:49:04

12 15:49:07

13 15:49:07

14 15:49:07

15

16 15:50:20

17 15:50:20

18 15:50:20

19 15:50:22

20 15:50:24

21 15:51:40

22 15:51:40

23 15:51:42

24 15:51:47

Non-Designated Portions Redacted

Q. And do you know why the private label brand generally does well when the national brand does well?

A. Consumers see the value of the private brand on the shelf.

Non-Designated Portions Redacted

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

McNEIL-PPC, Inc.)	In re Trademark Application
)	Serial No. 76/682,070
Opposer,)	Opposition No. 91184978
)	Trademark: WAL-ZYR
v.)	
)	
WALGREEN COMPANY,)	
)	
Applicant.)	

I hereby certify that I have read the foregoing transcript of my deposition given on April 16, 2009 in Deerfield, Illinois, consisting of Pages 1 to 237, inclusive, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition so given as aforesaid, and includes changes, if any, so made by me.



ROBERT TOMPKINS

SUBSCRIBED AND SWORN TO before me this 13th day
of July, A.D. 2009.



Notary Public



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

Opp. No. 91184978

**EXHIBIT 123
TO
OPPOSER'S REBUTTAL NOTICE OF RELIANCE
ON DEPOSITION TESTIMONY**

CONFIDENTIAL****CONFIDENTIAL****

****TRADE SECRET - COMMERCIALLY SENSITIVE****
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----x
McNEIL-PPC, INC.,

Opposer,

-against-

Opposition No.
91184978

WALGREEN CO.,

Applicant.

-----x

March 27, 2009
9:30 a.m.

Confidential Deposition of ROHINISH
HOODA, taken by the Applicant, pursuant to
Rule 30(b)(6) Notice, at the offices of Fross
Zelnick Lehrman & Zissu, P.C., 866 United
Nations Plaza, New York, New York, before
David Levy, CSR, a Notary Public of the State
of New York.

CONFIDENTIAL

A P P E A R A N C E S:

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

Attorneys for Opposer

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New York, New York 10017

BY: LAURA POPP-ROSENBERG, ESQ.

RICHARD LEHV, ESQ.

LEYDIG, VOIT & MAYER, LTD.

Attorneys for Applicant

Two Prudential Plaza, Suite 4900

Chicago, Illinois 60601

BY: MARK J. LISS, ESQ.

JAKE D. FELDMAN, ESQ.

Senior Trademark Attorney

Johnson & Johnson

One Johnson & Johnson Plaza

New Brunswick, New Jersey 08933

CONFIDENTIAL

Hooda - Trade Secret Commercially Sensitive

Non-Designated Portions Redacted

Trade Secret/Commercially Sensitive

Non-Designated Portions Redacted

CONFIDENTIAL

1 Hooda - Trade Secret Commercially Sensitive

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3 Non-Designated Portions Redacted
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11 Trade Secret/Commercially Sensitive
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25 Non-Designated Portions Redacted

CONFIDENTIAL

1 Hooda - Trade Secret Commercially Sensitive

2 Non-Designated Portions Redacted

4 Trade Secret/Commercially Sensitive

14 Non-Designated Portions Redacted

CONFIDENTIAL

1 Hooda - Trade Secret Commercially Sensitive

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6 Non-Designated Portions Redacted
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14 Trade Secret/Commercially Sensitive
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21 Non-Designated Portions Redacted
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

McNEIL-PPC, INC.,

Opposer,

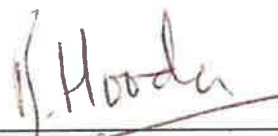
-against-

WALGREEN CO.,

Applicant.

Opp. No. 91184978

I, Rohinish Hooda, hereby certify that I have read the foregoing transcript of my deposition on March 27, 2009 in New York, New York, consisting of Pages 1-220, inclusive, and certify that the foregoing testimony of the pages of this deposition to be a true and correct transcript, including changes as shown on the following errata sheet.


Rohinish Hooda

Sworn and subscribed before me, at LANCASHIRE, PA
on the 7 day of February, 2011



Notary Public

